

City of Bainbridge Island Ethics Board
Ethics Complaint 2013-3
Determination
June 17, 2013

On May 5, 2013, Barry Peters filed an Ethics Complaint alleging that Councilmember Sarah Blossom:

1. "had a perceived or actual conflict of interest when she voted at a Council meeting in April 2013 for the City to pursue negotiations with Kitsap Public Utility District (KPUD) for a multi-year multi-million-dollar contract for water utility services; and/or
2. "would, in the future, have a perceived or actual conflict of interest if she were to vote to approve the City awarding such a multi-million dollar contract to KPUD, and therefore, under Ethics Code section II.D.1, she should refrain from voting on the KPUD contract."

In support of these allegations, the complaint alleges further that "if and when Council Member Blossom's family wishes to sell their water business, a very likely bidder, and perhaps the most likely buyer, would be the KPUD. . . . The City Council is expected to vote soon on whether the City should give KPUD a multi-year, multi-million dollar contract. The Council (including Member Blossom) voted last month to direct the City Manager to negotiate such a contract. . . . If Council Member Blossom in coming weeks votes in favor of a multi-year multi-million-dollar City contract with KPUD, it's reasonable to assume it would be likely to ingratiate her (and, indirectly, her family) with the Commissioners and managers of KPUD. . . . If Council Member Blossom votes against such a multi-million dollar contract for KPUD, it's reasonable to assume that Council Member Blossom (and her family) would not be ingratiated to the same extent with the KPUD leadership. . . . Council Member Blossom therefore has a perceived or actual conflict of interest regarding the KPUD, between making an impartial decision on a multi-million dollar contract to be funded by City ratepayers, versus her immediate family's financial interest in being viewed favorably by KPUD leaders who could be the decision makers on an eventual purchase of their family business. . . . [T]here would be a perceived or actual conflict because her immediate family owns very valuable property [South Bainbridge Water System, Inc. (SBWS)] that could or would be 'significantly affected' by Council Member Blossom casting a favorable vote for a multi-million dollar contractual benefit for KPUD that is likely to ingratiate her with the decision makers of KPUD."

The gravamen of this complaint is that Councilmember Blossom's vote in April to advance the contracting process and her potential future vote to enter a contract with KPUD for water utility services ingratiated, or will ingratiate, her and her family with KPUD and thereby position them to receive more favorable terms if KPUD were to purchase SBWS. Therefore, the complaint alleges, these past and potential future votes violate Ethics Code section II.D.1.c, which bars an elected official from "tak[ing] any direct official action on a matter on behalf of the City if he or she, or a member of the immediate family . . . is a party to a contract or the owner of an interest in real or personal property that would be significantly affected by the action."

The Ethics Board notes there is no allegation or indication in the record that Councilmember Blossom's family has taken steps or intends to sell, or that KPUD has taken steps or intends to purchase, SBWS. Thus, at present this transaction is speculative. Moreover, KPUD is a non-profit municipal corporation subject to public scrutiny and oversight that would undoubtedly restrict the utility's discretion and require the use of objective measures in setting the purchase price for a small system such as SBWS. Thus, if the purchase and sale of SBWS were to move forward, the effect of the alleged ingratiation would likely be minimal or nonexistent.

Absent any indication that KPUD and the Blossom family are contemplating a purchase and sale of SBWS and in light of the public scrutiny of the terms of any such transaction, the allegation that her vote in April on a proposed services contract between the City and KPUD would ingratiate Councilmember Blossom and her family with KPUD and thereby impact a sale of SBWS in their favor is highly speculative and contrary to reasonable expectation. We cannot say that Councilmember Blossom or her family's interests would be "significantly affected" by her participation in the current contracting process, as SBWS does not appear to be in a different position than any other small water system on Bainbridge Island.

Accordingly, the Ethics Board has determined that the first allegation of the complaint, regarding the vote in April 2013, lacks reasonable credibility.

With regard to the second allegation, concerning a vote in the future, the Ethics Board is not authorized to review a complaint of a potential violation. If the Board were to consider your allegation regarding what Councilmember Blossom *might* do at a future Council meeting, that would leave her in the position of having to defend in the abstract a behavior that has not occurred. Further, you have requested a remedy - recusal - that is not within the authority of the Board to order. Accordingly the Board takes no action with respect to this allegation.

Although styled as a complaint, the second allegation is more accurately characterized as a request for an advisory opinion as to whether certain behavior of Councilmember Blossom in the future might violate the Code of Ethics. The Ethics Board is authorized to respond to such a request only if made by an individual with respect to his or her own behavior. This limitation avoids the problem of issuing an advisory opinion about an official's actions based solely on someone else's description and characterization of those actions. It is an important limitation especially with regard to actions that have not yet occurred. Accordingly the Board will not issue an advisory opinion with respect to this allegation.

The Ethics Board notes that the ownership of SBWS by Councilmember Blossom's family and her own employment by SBWS may raise questions about potential conflicts of interest whenever the City Council deals with water services issues. In such instances the Board encourages Councilmember Blossom to undertake a discussion with her fellow Councilmembers to judge the significance of these relationships with SBWS and whether a possible conflict of interest exists, as set forth in Ethics Code section II.I. Also, Councilmember Blossom may seek an advisory opinion from the Board, as set forth in Ethics Code section III.F.1.

This determination was unanimously approved by the Ethics Board as to result on May 20, 2013 (Honick not present) and as to written explanation herein on June 17, 2013 (Thomasson not present).

Erin Thomasson, Chair